

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

DANNY RAY CAPPS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-07-084-KEW
	)	
OWENS-BROCKWAY GLASS	)	
CONTAINERS, a division of	)	
Owens Illinois, Inc.,	)	
	)	
Defendant.	)	

OPINION AND ORDER

This matter comes before the Court on Defendant's Motion for Summary Judgment filed December 17, 2007 (Docket Entry #34). Plaintiff was required to file a response to the Motion by January 2, 2008, in accordance with this Court's local rules. EDOK LcvR 7.1(f). When the response was not filed in a timely manner, this Court entered a show cause order on January 4, 2008, requiring Plaintiff to show cause as to why this motion should not be granted, based upon Plaintiff's failure to file a response. On January 9, 2008, Plaintiff filed a response to the show cause order stating that counsel had difficulties obtaining affidavits from Plaintiff in order to respond. As such, Plaintiff requested until January 11, 2008 to file a response. On that date, Plaintiff filed a Motion to Confess Summary Judgment, stating that Defendant's motion was being confessed because he was "unable to secure certain affidavits." Based upon this representation, this Court finds both pending motions should be granted and judgment on the merits should be entered in favor of Defendant.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Confess

Summary Judgment filed January 11, 2008 (Docket Entry #42) is hereby **GRANTED**. Plaintiff is, therefore, deemed to have confessed Defendant's request for summary judgment.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment filed December 17, 2007 (Docket Entry #34) is hereby **GRANTED**. As a result, judgment shall be entered in favor of Defendant on all claims in this action.

IT IS SO ORDERED this 14<sup>th</sup> day of January, 2008.

  
KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE